

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

In re: OHIO EXECUTION
PROTOCOL LITIGATION,

: Case No. 2:11-cv-1016

Chief Judge Edmund A. Sargus, Jr.
Magistrate Judge Michael R. Merz

This Order relates to Cleveland Jackson :

**DECISION AND ORDER ON MOTION TO ADMIT PRIOR
EVIDENCE AND TESTIMONY**

Before the Court is Plaintiff Cleveland Jackson's Motion to Admit Prior Evidence and Testimony (ECF No. 2160), which Jackson filed on February 14, 2019. In the motion, Jackson designated testimony proffered and evidence introduced in connection with previous motions for preliminary injunction and evidentiary hearings in this consolidated litigation (Designation of Prior Evidence, ECF No. 2160-1). In support, Jackson noted that admission of such evidence was permissible under the Federal Rules of Evidence, and "suggest[ed that] it would be an inefficient use of the Court's and Parties' limited time and resources to take identical testimony from every witness about issues on which the witness has already testified." (Motion, ECF No. 2160, PageID 106600 (citations omitted)). On March 6, 2019, Defendants filed a response, in which they stated that they "do not oppose admission of Jackson's designations of prior testimony (with a few noted exceptions)[.]" (ECF No. 2178, PageID 106697). First, "for three of the listed witnesses where

cross-examination testimony was not included, Defendants request that the Court also admit, pursuant to Fed. R. Evid. 106, additional portions of the testimony[.]” *Id.* at PageID 106698, citing ECF No. 2178-1. Second, “because Jackson has not stated and Defendants do not know the purpose for which Jackson intends to offer the exhibits or the manner in which they may be used, Defendants specifically reserve the right to enter objections to admission of the previously admitted exhibits.” *Id.* at PageID 106699.

Finding good cause shown, the Court SUSTAINS Jackson’s Motion, subject to the Defendants’ conditions. All testimony designated by Jackson and Defendants (ECF Nos. 2160-1, 2178-1) is admitted and will be considered by the Court in adjudicating Jackson’s Motion for a Stay of Execution, a Preliminary Injunction, and an Evidentiary Hearing (ECF No. 2159). If an evidentiary hearing is granted, Defendants will have the opportunity to object to any designated exhibits prior to their admission with respect to Jackson.

April 1, 2019.

s/ *Michael R. Merz*
United States Magistrate Judge